[DE] No injunctive relief in the case of photo reporting from the realm of contemporary history

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In a judgment of 11 June 2013 (Case VI ZR 4/12) the Bundesgerichtshof (Federal Court of Justice - BGH) ruled that there was no entitlement to injunctive relief in the case of photo reporting from the realm of contemporary history.

On 2 November 2010, the television channel of the public service broadcaster ARD carried an episode of a socio-critical satirical programme in which the plaintiff could be seen and heard for a total of three and a half minutes. A few months before, on 24 June 2010, the plaintiff, a member of a group of three women who describe themselves as “grandmothers against war”, held a vigil on Berlin’s Pariser Platz against a military operation that had taken place shortly before. A journalist who was filming for an episode of the aforementioned television production spoke about the vigil to the plaintiff on camera and discussed with her issues of international law and the legitimacy of military operations. The next day and a few days later, the plaintiff wrote an email to the defendant company that produces the programme and revoked as a precaution any consent given to the recording and the broadcasting of the images. After the programme had been broadcast nevertheless, she brought an action seeking an injunction to prevent any further broadcasting of the programme. She claimed that she had neither expressly nor tacitly consented to the recording and that at the time the recording was made she knew neither the journalist nor the programme broadcast.

The court of appeal affirmed the plaintiff’s right to injunctive relief but this was rejected by the BGH. On the basis of the graduated approach to protection afforded by sections 22 and 23 of the Kunsturhebergesetz (Art Copyright Act - KUG), images of a person may exceptionally be published without his or her consent if the images are from the realm of contemporary history and their dissemination does not harm the legitimate interests of the person depicted. On this point, the BGH stated that the vigil held by the plaintiff was such an event of contemporary history as it had been held on a busy city square with the intention of it being seen by as broad a section of the public as possible. In addition, it pursued a political goal in connection with a military operation that had taken place shortly before and had caused a stir both nationally and internationally. The plaintiff’s intention with the vigil had, according to the court, been to exert influence on public opinion.

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The court also noted that the broadcast had not violated any of the plaintiff's legitimate interests. In his discussion with her, the journalist had adopted a critical position rejecting her opinion, so that she had to expect her action to be shown in a critical light in the programme. The satirical treatment of her statements in the broadcast had not exceeded the limits of permissible and reasonable criticism.

Das Urteil des Bundesgerichtshofs vom 11 Juni 2013 (Az.: VI ZR 209/09)

https://openjur.de/u/639914.html

Judgment of the Federal Court of Justice of 11 June 2013 (Case VI ZR 209/09)

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